

1 **TITLE VII—HAZARDOUS**
2 **MATERIALS TRANSPORTATION**

3 **SEC. 7001. SHORT TITLE.**

4 This title may be cited as the “Hazardous Materials
5 Transportation Safety and Security Reauthorization Act
6 of 2005”.

7 **SEC. 7002. AMENDMENT OF TITLE 49, UNITED STATES**
8 **CODE.**

9 Except as otherwise expressly provided, whenever in
10 this title an amendment or repeal is expressed in terms
11 of an amendment to, or a repeal of, a section or other
12 provision, the reference shall be considered to be made to
13 a section or other provision of title 49, United States
14 Code.

15 **Subtitle A—General Authorities on**
16 **Transportation of Hazardous**
17 **Materials**

18 **SEC. 7101. FINDINGS AND PURPOSE.**

19 (a) FINDINGS.—Congress finds with respect to haz-
20 ardous materials transportation that—

21 (1) approximately 4,000,000,000 tons of regu-
22 lated hazardous materials are transported each year
23 and approximately 1,200,000 movements of haz-



1 ardous materials occur each day, according to De-
2 partment of Transportation estimates;

3 (2) the movement of hazardous materials in
4 commerce is necessary to maintain economic vitality
5 and meet consumer demands and must be conducted
6 in a safe, secure, and efficient manner;

7 (3) accidents involving, or unauthorized access
8 to, hazardous materials in transportation may result
9 in a release of such materials and pose a serious
10 threat to public health and safety;

11 (4) because of the potential risks to life, prop-
12 erty, and the environment posed by unintentional re-
13 leases of hazardous materials, consistency in laws
14 and regulations governing the transportation of haz-
15 ardous materials is necessary and desirable; and

16 (5) in order to provide reasonable, adequate,
17 and cost-effective protection from the risks posed by
18 the transportation of hazardous materials, a network
19 of well-trained State and local emergency response
20 personnel and hazmat employees is essential.

21 (b) PURPOSE.—Section 5101 is amended by striking
22 “The purpose” and all that follows through the period at
23 the end and inserting the following: “The purpose of this
24 chapter is to protect against the risks to life, property,
25 and the environment that are inherent in the transpor-



1 tation of hazardous material in intrastate, interstate, and
2 foreign commerce.”.

3 **SEC. 7102. DEFINITIONS.**

4 Section 5102 is amended as follows:

5 (1) COMMERCE.—Paragraph (1) is amended—

6 (A) by striking “or” after the semicolon in
7 subparagraph (A);

8 (B) by striking “State.” in subparagraph
9 (B) and inserting “State; or”; and

10 (C) by adding at the end the following:

11 “(C) on a United States-registered air-
12 craft.”.

13 (2) HAZMAT EMPLOYEE.—Paragraph (3)(A) is
14 amended—

15 (A) by striking clause (i) and inserting the
16 following:

17 “(i) who—

18 “(I) is employed on a full time,
19 part time, or temporary basis by a
20 hazmat employer; or

21 “(II) is self-employed (including
22 an owner-operator of a motor vehicle,
23 vessel, or aircraft) transporting haz-
24 ardous material in commerce; and”;

25 (B) in clause (ii)—



1 (i) by striking “course of employ-
2 ment” and inserting “course of such full
3 time, part time, or temporary employment,
4 or such self employment,”; and

5 (ii) by adding “and” after the semi-
6 colon;

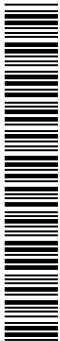
7 (C) by striking subparagraph (B) and re-
8 designating subparagraph (C) as subparagraph
9 (B); and

10 (D) in subparagraph (B), as so
11 redesignated—

12 (i) by striking “employed by a hazmat
13 employer,” and inserting “employed on a
14 full time, part time, or temporary basis by
15 a hazmat employer, or self employed,”; and

16 (ii) by striking clause (ii) and insert-
17 ing the following:

18 “(ii) designs, manufactures, fab-
19 ricates, inspects, marks, maintains, recon-
20 ditions, repairs, or tests a package, con-
21 tainer, or packaging component that is
22 represented, marked, certified, or sold as
23 qualified for use in transporting hazardous
24 material in commerce;”.



1 (3) HAZMAT EMPLOYER.—Paragraph (4) is
2 amended to read as follows:

3 “(4) ‘hazmat employer’—

4 “(A) means a person—

5 “(i) who—

6 “(I) employs or uses at least 1
7 hazmat employee on a full time, part
8 time, or temporary basis; or

9 “(II) is self-employed (including
10 an owner-operator of a motor vehicle,
11 vessel, or aircraft) transporting haz-
12 ardous material in commerce; and

13 “(ii) who—

14 “(I) transports hazardous mate-
15 rial in commerce;

16 “(II) causes hazardous material
17 to be transported in commerce; or

18 “(III) designs, manufactures,
19 fabricates, inspects, marks, maintains,
20 reconditions, repairs, or tests a pack-
21 age, container, or packaging compo-
22 nent that is represented, marked, cer-
23 tified, or sold as qualified for use in
24 transporting hazardous material in
25 commerce; and



1 “(B) includes a department, agency, or in-
2 strumentality of the United States Government,
3 or an authority of a State, political subdivision
4 of a State, or Indian tribe, carrying out an ac-
5 tivity described in clause (ii).”.

6 (4) IMMINENT HAZARD.—Paragraph (5) is
7 amended by inserting “relating to hazardous mate-
8 rial” after “of a condition”.

9 (5) MOTOR CARRIER.—Paragraph (7) is amend-
10 ed to read as follows:

11 “(7) ‘motor carrier’—

12 “(A) means a motor carrier, motor private
13 carrier, and freight forwarder as those terms
14 are defined in section 13102; but

15 “(B) does not include a freight forwarder,
16 as so defined, if the freight forwarder is not
17 performing a function relating to highway
18 transportation.”.

19 (6) NATIONAL RESPONSE TEAM.—Paragraph
20 (8) is amended—

21 (A) by striking “national response team”
22 both places it appears and inserting “National
23 Response Team”; and



1 (B) by striking “national contingency
2 plan” and inserting “National Contingency
3 Plan”.

4 (7) PERSON.—Paragraph (9)(A) is amended to
5 read as follows:

6 “(A) includes a government, Indian tribe,
7 or authority of a government or tribe that—

8 “(i) offers hazardous material for
9 transportation in commerce;

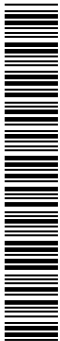
10 “(ii) transports hazardous material to
11 further a commercial enterprise; or

12 “(iii) designs, manufactures, fab-
13 ricates, inspects, marks, maintains, recon-
14 ditions, repairs, or tests a package, con-
15 tainer, or packaging component that is
16 represented, marked, certified, or sold as
17 qualified for use in transporting hazardous
18 material in commerce; but”.

19 (8) SECRETARY OF TRANSPORTATION.—Section
20 5102 is further amended—

21 (A) by redesignating paragraphs (11),
22 (12), and (13) as paragraphs (12), (13), and
23 (14), respectively; and

24 (B) by inserting after paragraph (10) the
25 following:



1 “(11) ‘Secretary’ means the Secretary of Trans-
2 portation except as otherwise provided.”.

3 **SEC. 7103. GENERAL REGULATORY AUTHORITY.**

4 (a) DESIGNATING MATERIAL AS HAZARDOUS.—Sec-
5 tion 5103(a) is amended—

6 (1) by striking “etiologic agent” and all that
7 follows through “corrosive material,” and inserting
8 “infectious substance, flammable or combustible liq-
9 uid, solid, or gas, toxic, oxidizing, or corrosive mate-
10 rial,”; and

11 (2) by striking “decides” and inserting “deter-
12 mines”.

13 (b) REGULATIONS FOR SAFE TRANSPORTATION.—
14 Section 5103(b)(1)(A) is amended to read as follows:

15 “(A) apply to a person who—

16 “(i) transports hazardous material in
17 commerce;

18 “(ii) causes hazardous material to be
19 transported in commerce;

20 “(iii) designs, manufactures, fab-
21 ricates, inspects, marks, maintains, recon-
22 ditions, repairs, or tests a package, con-
23 tainer, or packaging component that is
24 represented, marked, certified, or sold as



1 qualified for use in transporting hazardous
2 material in commerce;

3 “(iv) prepares or accepts hazardous
4 material for transportation in commerce;

5 “(v) is responsible for the safety of
6 transporting hazardous material in com-
7 merce;

8 “(vi) certifies compliance with any re-
9 quirement under this chapter; or

10 “(vii) misrepresents whether such per-
11 son is engaged in any activity under clause
12 (i) through (vi); and”.

13 (c) TECHNICAL AMENDMENT REGARDING CON-
14 SULTATION.—Section 5103 is amended—

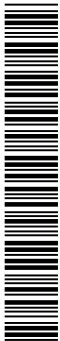
15 (1) by striking subsection (b)(1)(C); and

16 (2) by adding at the end the following:

17 “(c) CONSULTATION.—When prescribing a security
18 regulation or issuing a security order that affects the safe-
19 ty of the transportation of hazardous material, the Sec-
20 retary of Homeland Security shall consult with the Sec-
21 retary of Transportation.”.

22 **SEC. 7104. LIMITATION ON ISSUANCE OF HAZMAT LI-**
23 **CENSES.**

24 (a) COVERED HAZARDOUS MATERIALS.—Section
25 5103a(b) is amended by striking “with respect to—” and



1 all that follows and inserting “with respect to any material
2 defined as hazardous material by the Secretary for which
3 the Secretary requires placarding of a commercial motor
4 vehicle transporting that material in commerce.”.

5 (b) RECOMMENDATIONS ON CHEMICAL OR BIOLOGI-
6 CAL MATERIALS.—Section 5103a is further amended—

7 (1) by redesignating subsections (c), (d), and
8 (e) as subsections (d), (e), and (f), respectively; and

9 (2) by inserting after subsection (b) the fol-
10 lowing:

11 “(c) RECOMMENDATIONS ON CHEMICAL AND BIO-
12 LOGICAL MATERIALS.—The Secretary of Health and
13 Human Services shall recommend to the Secretary of
14 Transportation any chemical or biological material or
15 agent for regulation as a hazardous material under section
16 5103(a) if the Secretary of Health and Human Services
17 determines that such material or agent poses a significant
18 risk to the health of individuals.”.

19 (c) CONFORMING AMENDMENT.—Section
20 5103a(a)(1) is amended by striking “subsection
21 (c)(1)(B),” and inserting “subsection (d)(1)(B),”.

22 **SEC. 7105. BACKGROUND CHECKS FOR DRIVERS HAULING**
23 **HAZARDOUS MATERIALS.**

24 Section 5103a is further amended by adding at the
25 end the following:



1 “(g) BACKGROUND CHECKS FOR DRIVERS HAULING
2 HAZARDOUS MATERIALS.—

3 “(1) IN GENERAL.—

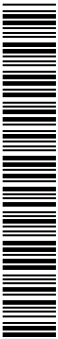
4 “(A) EMPLOYER NOTIFICATION.—Not
5 later than 90 days after the date of enactment
6 of this subsection, the Director of the Transpor-
7 tation Security Administration, after receiving
8 comments from interested parties, shall develop
9 and implement a process for notifying hazmat
10 employers designated by an applicant of the re-
11 sults of the applicant’s background record
12 check, if—

13 “(i) such notification is appropriate
14 considering the potential security implica-
15 tions; and

16 “(ii) the Director, in a final notifica-
17 tion of threat assessment, served on the
18 applicant determines that the applicant
19 does not meet the standards set forth in
20 regulations issued to carry out this section.

21 “(B) RELATIONSHIP TO OTHER BACK-
22 GROUND RECORDS CHECKS.—

23 “(i) ELIMINATION OF REDUNDANT
24 CHECKS.—An individual with respect to

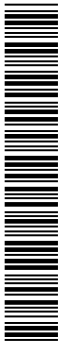


1 whom the Transportation Security
2 Administration—

3 “(I) has performed a security
4 threat assessment under this section;
5 and

6 “(II) has issued a final notifica-
7 tion of no security threat,
8 is deemed to have met the requirements of
9 any other background check that is re-
10 quired for purposes of any Federal law ap-
11 plicable to transportation workers if that
12 background check is equivalent to, or less
13 stringent than, the background check re-
14 quired under this section.

15 “(ii) DETERMINATION BY DIREC-
16 TOR.—Not later than 60 days after the
17 date of issuance of the report under para-
18 graph (5), but no later than 120 days after
19 the date of enactment of this Act, the Di-
20 rector shall initiate a rulemaking pro-
21 ceeding, including notice and opportunity
22 for comment, to determine which back-
23 ground checks required for purposes of
24 Federal laws applicable to transportation



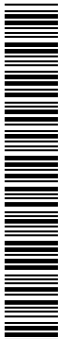
1 workers are equivalent to, or less stringent
2 than, those required under this section.

3 “(iii) FUTURE RULEMAKINGS.—The
4 Director shall make a determination under
5 the criteria established under clause (ii)
6 with respect to any rulemaking proceeding
7 to establish or modify required background
8 checks for transportation workers initiated
9 after the date of enactment of this sub-
10 section.

11 “(2) APPEALS PROCESS FOR MORE STRINGENT
12 STATE PROCEDURES.—If a State establishes its own
13 standards for applicants for a hazardous materials
14 endorsement to a commercial driver’s license, the
15 State shall also provide—

16 “(A) an appeals process similar to and to
17 the same extent as the process provided under
18 part 1572 of title 49, Code of Federal Regula-
19 tions, by which an applicant denied a hazardous
20 materials endorsement to a commercial driver’s
21 license by that State may appeal that denial;
22 and

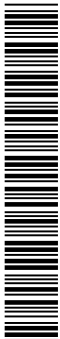
23 “(B) a waiver process similar to and to the
24 same extent as the process provided under part
25 1572 of title 49, Code of Federal Regulations,



1 by which an applicant denied a hazardous mate-
2 rials endorsement to a commercial driver's li-
3 cense by that State may apply for a waiver.

4 “(3) CLARIFICATION OF TERM DEFINED IN
5 REGULATIONS.—The term ‘transportation security
6 incident’, as defined in part 1572 of title 49, Code
7 of Federal Regulations, does not include a work
8 stoppage or other nonviolent employee-related action
9 resulting from an employer-employee dispute. Not
10 later than 30 days after the date of enactment of
11 this subsection, the Director shall modify the defini-
12 tion of that term to reflect the preceding sentence.

13 “(4) BACKGROUND CHECK CAPACITY.—Not
14 later than October 1, 2005, the Director shall trans-
15 mit to the Committee on Commerce, Science, and
16 Transportation of the Senate and the Committees on
17 Transportation and Infrastructure and Homeland
18 Security of the House of Representatives a report on
19 the implementation of fingerprint-based security
20 threat assessments and the adequacy of
21 fingerprinting locations, personnel, and resources to
22 accomplish the timely processing of fingerprint-based
23 security threat assessments for individuals holding
24 commercial driver's licenses who are applying to
25 renew hazardous materials endorsements.



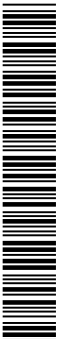
1 “(5) REPORT.—

2 “(A) IN GENERAL.—Not later than 60
3 days after the date of enactment of this sub-
4 section, the Director shall transmit to the com-
5 mittees referred to in paragraph (4) a report on
6 the Director’s plans to reduce or eliminate re-
7 dundant background checks for holders of haz-
8 ardous materials endorsements performed
9 under this section.

10 “(B) CONTENTS.—The report shall—

11 “(i) include a list of background
12 checks and other security or threat assess-
13 ment requirements applicable to transpor-
14 tation workers under Federal laws for
15 which the Department of Homeland Secu-
16 rity is responsible and the process by
17 which the Secretary of Homeland Security
18 will determine whether such checks or as-
19 sessments are equivalent to, or less strin-
20 gent than, the background check per-
21 formed under this section; and

22 “(ii) provide an analysis of how the
23 Director plans to reduce or eliminate re-
24 dundant background checks in a manner



1 that will continue to ensure the highest
2 level of safety and security.

3 “(h) COMMERCIAL MOTOR VEHICLE OPERATORS
4 REGISTERED TO OPERATE IN MEXICO OR CANADA.—

5 “(1) IN GENERAL.—Beginning on the date that
6 is 6 months after the date of enactment of this sub-
7 section, a commercial motor vehicle operator reg-
8 istered to operate in Mexico or Canada shall not op-
9 erate a commercial motor vehicle transporting a haz-
10 ardous material in commerce in the United States
11 until the operator has undergone a background
12 records check similar to the background records
13 check required for commercial motor vehicle opera-
14 tors licensed in the United States to transport haz-
15 ardous materials in commerce.

16 “(2) EXTENSION.—The Director of the Trans-
17 portation Security Administration may extend the
18 deadline established by paragraph (1) for a period
19 not to exceed 6 months if the Director determines
20 that such an extension is necessary.

21 “(3) COMMERCIAL MOTOR VEHICLE DE-
22 FINED.—In this subsection, the term ‘commercial
23 motor vehicle’ has the meaning given that term by
24 section 31101.”.



1 **SEC. 7106. REPRESENTATION AND TAMPERING.**

2 (a) REPRESENTATION.—Section 5104(a)(1) is
3 amended—

4 (1) by striking “a container,” and all that fol-
5 lows through “packaging) for” and inserting “a
6 package, component of a package, or packaging
7 for”; and

8 (2) by striking “the container” and all that fol-
9 lows through “packaging) meets” and inserting “the
10 package, component of a package, or packaging
11 meets”.

12 (b) TAMPERING.—Section 5104(b) is amended—

13 (1) by striking “A person may not” and insert-
14 ing “No person may”; and

15 (2) in paragraph (2) by inserting “component
16 of a package, or packaging,” after “package,”.

17 **SEC. 7107. TECHNICAL AMENDMENTS.**

18 Section 5105 is amended—

19 (1) by striking subsection (d); and

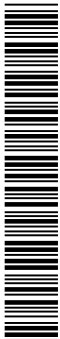
20 (2) by redesignating subsection (e) as sub-
21 section (d).

22 **SEC. 7108. TRAINING OF CERTAIN EMPLOYEES.**

23 Section 5107 is amended—

24 (1) by striking subsection (e) and inserting the
25 following:

26 “(e) TRAINING GRANTS.—



1 “(1) IN GENERAL.—Subject to the availability
2 of funds under section 5128(c), the Secretary shall
3 make grants under this subsection—

4 “(A) for training instructors to train
5 hazmat employees; and

6 “(B) to the extent determined appropriate
7 by the Secretary, for such instructors to train
8 hazmat employees.

9 “(2) ELIGIBILITY.—A grant under this sub-
10 section shall be made to a nonprofit hazmat em-
11 ployee organization that demonstrates—

12 “(A) expertise in conducting a training
13 program for hazmat employees; and

14 “(B) the ability to reach and involve in a
15 training program a target population of hazmat
16 employees.”;

17 (2) by redesignating subsections (f) and (g) as
18 subsections (g) and (h), respectively;

19 (3) by inserting after subsection (e) the fol-
20 lowing:

21 “(f) TRAINING OF CERTAIN EMPLOYEES.—The Sec-
22 retary shall ensure that maintenance-of-way employees
23 and railroad signalmen receive general awareness and fa-
24 miliarization training and safety training pursuant to sec-



1 tion 172.704 of title 49, Code of Federal Regulations.”;
2 and

3 (4) in subsection (g)(2) (as redesignated by
4 paragraph (2) of this subsection) by striking “sec-
5 tions 5106, 5108(a)–(g)(1) and (h), and 5109 of
6 this title” and inserting “section 5106”.

7 **SEC. 7109. REGISTRATION.**

8 (a) **PERSONS REQUIRED TO FILE.**—

9 (1) **REQUIREMENT TO FILE.**—Section
10 5108(a)(1)(B) is amended by striking “class A or B
11 explosive” and inserting “Division 1.1, 1.2, or 1.3
12 explosive material”.

13 (2) **AUTHORITY TO REQUIRE TO FILE.**—Section
14 5108(a)(2)(B) is amended to read as follows:

15 “(B) a person designing, manufacturing, fabri-
16 cating, inspecting, marking, maintaining, recondi-
17 tioning, repairing, or testing a package, container, or
18 packaging component that is represented, marked,
19 certified, or sold as qualified for use in transporting
20 hazardous material in commerce.”.

21 (3) **NO TRANSPORTATION WITHOUT FILING.**—
22 Section 5108(a)(3) is amended by striking “manu-
23 facture,” and all that follows through “package or”
24 and inserting “design, manufacture, fabricate, in-



1 spect, mark, maintain, recondition, repair, or test a
2 package, container packaging component, or”.

3 (b) FORM AND CONTENT OF FILINGS.—Section
4 5108(b)(1)(C) is amended by striking “the activity.” and
5 inserting “any of the activities.”.

6 (c) FILING.—Section 5108(c) is amended to read as
7 follows:

8 “(c) FILING.—Each person required to file a reg-
9 istration statement under subsection (a) shall file the
10 statement in accordance with regulations prescribed by the
11 Secretary.”.

12 (d) REGISTRATION.—As soon as practicable, the Ad-
13 ministrator of the Pipeline and Hazardous Materials Safe-
14 ty Administration shall transmit to the Federal Motor
15 Carrier Safety Administration hazardous material reg-
16 istrant information obtained before, on, or after the date
17 of enactment of this Act under section 5108 of title 49,
18 United States Code, together with any Department of
19 Transportation identification number for each registrant.

20 (e) RELATIONSHIP TO OTHER LAWS.—Section
21 5108(i)(2)(B) is amended by inserting “an Indian tribe,”
22 after “subdivision of a State,”.

23 (f) FEES.—Section 5108(g) is amended—

24 (1) in paragraph (1) by striking “may” and in-
25 serting “shall”;



1 (2) in paragraph (2)(A) by striking “\$5,000”
2 and inserting “\$3,000”; and

3 (3) by adding at the end the following:

4 “(3) FEES ON EXEMPT PERSONS.—Notwith-
5 standing subsection (a)(4), the Secretary shall im-
6 pose and collect a fee of \$25 from a person who is
7 required to register under this section but who is
8 otherwise exempted by the Secretary from paying
9 any fee under this section. The fee shall be used to
10 pay the costs incurred by the Secretary in processing
11 registration statements filed by such persons.”.

12 **SEC. 7110. SHIPPING PAPERS AND DISCLOSURE.**

13 (a) DISCLOSURE CONSIDERATIONS AND REQUIRE-
14 MENTS.—Section 5110 is amended—

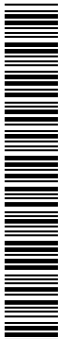
15 (1) by striking “under subsection (b) of this
16 section.” in subsection (a) and inserting “in regula-
17 tions.”;

18 (2) by striking subsection (b); and

19 (3) by redesignating subsections (c), (d), and
20 (e) as subsections (b), (c), and (d), respectively.

21 (b) RETENTION OF PAPERS.—Subsection (d) of sec-
22 tion 5110, as redesignated by subsection (a)(3) of this sec-
23 tion, is amended to read as follows:

24 “(d) RETENTION OF PAPERS.—



1 “(1) SHIPPERS.—The person who provides the
2 shipping paper under this section shall retain the
3 paper, or an electronic format of it, for a period of
4 2 years after the date that the shipping paper is
5 provided to the carrier, with the paper or electronic
6 format to be accessible through the shipper’s prin-
7 cipal place of business.

8 “(2) CARRIERS.—The carrier required to keep
9 the shipping paper under this section, shall retain
10 the paper, or an electronic format of it, for a period
11 of 1 year after the date that the shipping paper is
12 provided to the carrier, with the paper or electronic
13 format to be accessible through the carrier’s prin-
14 cipal place of business.

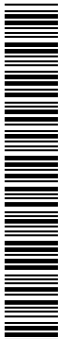
15 “(3) AVAILABILITY TO GOVERNMENT AGEN-
16 CIES.—Any person required to keep a shipping
17 paper under this subsection shall, upon request,
18 make it available to a Federal, State, or local gov-
19 ernment agency at reasonable times and locations.”.

20 **SEC. 7111. RAIL TANK CARS.**

21 Section 5111, and the item relating to section 5111
22 in the analysis for chapter 51, are repealed.

23 **SEC. 7112. UNSATISFACTORY SAFETY RATINGS.**

24 (a) IN GENERAL.—The text of section 5113 is
25 amended to read as follows: “A violation of section



1 31144(c)(3) shall be considered a violation of this chapter,
2 and shall be subject to the penalties in sections 5123 and
3 5124.”.

4 (b) CONFORMING AMENDMENTS.—The first sub-
5 section (c) of section 31144, relating to prohibited trans-
6 portation, is amended—

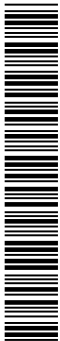
7 (1) in paragraph (1) by striking “sections
8 521(b)(5)(A) and 5113” and inserting “section
9 521(b)(5)(A)”;

10 (2) by adding at the end of paragraph (3) the
11 following: “A violation of this paragraph by an
12 owner or operator transporting hazardous material
13 shall be considered a violation of chapter 51, and
14 shall be subject to the penalties in sections 5123 and
15 5124.”.

16 (c) TECHNICAL CORRECTION.—The second sub-
17 section (c) of section 31144, relating to safety reviews of
18 new operators, is redesignated as subsection (f).

19 **SEC. 7113. TRAINING CURRICULUM FOR THE PUBLIC SEC-**
20 **TOR.**

21 (a) IN GENERAL.—Section 5115(a) is amended by
22 striking the subsection designation and all that follows
23 through the period at the end of the first sentence and
24 inserting the following:



1 “(a) IN GENERAL.—In coordination with the Direc-
2 tor of the Federal Emergency Management Agency, the
3 Chairman of the Nuclear Regulatory Commission, the Ad-
4 ministrators of the Environmental Protection Agency, the
5 Secretaries of Labor, Energy, and Health and Human
6 Services, and the Director of the National Institute of En-
7 vironmental Health Sciences, and using existing coordi-
8 nating mechanisms of the National Response Team and,
9 for radioactive material, the Federal Radiological Pre-
10 paredness Coordinating Committee, the Secretary of
11 Transportation shall maintain, and update periodically, a
12 current curriculum of courses necessary to train public
13 sector emergency response and preparedness teams in
14 matters relating to the transportation of hazardous mate-
15 rial.”.

16 (b) REQUIREMENTS.—Section 5115(b) is amended—

17 (1) in the matter preceding paragraph (1) by
18 striking “developed” and inserting “maintained and
19 updated”; and

20 (2) in paragraph (1)(C) by striking “under
21 other United States Government grant programs, in-
22 cluding those” and inserting “with Federal financial
23 assistance, including programs”.

24 (c) TRAINING ON COMPLYING WITH LEGAL RE-
25 QUIREMENTS.—Section 5115(c)(3) is amended by insert-



1 ing before the period at the end the following: “and such
2 other voluntary consensus standard-setting organizations
3 as the Secretary of Transportation determines appro-
4 priate”.

5 (d) DISTRIBUTION AND PUBLICATION.—Section
6 5115(d) is amended—

7 (1) in the matter preceding paragraph (1) by
8 striking “national response team” and inserting
9 “National Response Team”;

10 (2) in paragraph (1) by striking “Director of
11 the Federal Emergency Management Agency” and
12 inserting “Secretary”; and

13 (3) in paragraph (2)—

14 (A) by inserting “and distribute” after
15 “publish”; and

16 (B) by striking “programs that uses” and
17 all that follows before the period at the end and
18 inserting “programs and courses maintained
19 and updated under this section and of any pro-
20 grams utilizing such courses”.



1 **SEC. 7114. PLANNING AND TRAINING GRANTS; HAZARDOUS**
2 **MATERIALS EMERGENCY PREPAREDNESS**
3 **FUND.**

4 (a) MAINTENANCE OF EFFORT.—Sections
5 5116(a)(2)(A) and 5116(b)(2)(A) are amended by striking
6 “2 fiscal years” and inserting “5 fiscal years”.

7 (b) MONITORING AND TECHNICAL ASSISTANCE.—
8 Section 5116(f) is amended by striking “national response
9 team” and inserting “National Response Team”.

10 (c) DELEGATION OF AUTHORITY.—Section 5116(g)
11 is amended by striking “Government grant programs” and
12 inserting “Federal financial assistance”.

13 (d) HAZARDOUS MATERIALS EMERGENCY PRE-
14 PAREDNESS FUND.—

15 (1) NAME OF FUND.—Section 5116(i) is
16 amended by inserting after “an account in the
17 Treasury” the following: “(to be known as the ‘Haz-
18 arduous Materials Emergency Preparedness Fund’)”.

19 (2) PUBLICATION OF EMERGENCY RESPONSE
20 GUIDE.—Section 5116(i) is further amended—

21 (A) by striking “collects under section
22 5108(g)(2)(A) of this title and”;

23 (B) by striking “and” after the semicolon
24 in paragraph (2);

25 (C) by redesignating paragraph (3) as
26 paragraph (4);



1 (D) by inserting after paragraph (2) the
2 following:

3 “(3) to publish and distribute an emergency re-
4 sponse guide; and”; and

5 (E) in paragraph (4) (as redesignated by
6 subparagraph (C) of this paragraph) by striking
7 “10 percent” and inserting “2 percent”.

8 (3) CONFORMING AMENDMENT.—Section
9 5108(g)(2)(C) is amended by striking “the account
10 the Secretary of the Treasury establishes” and in-
11 serting “the Hazardous Materials Emergency Pre-
12 paredness Fund established”.

13 (e) REPORTS.—Section 5116(k) is amended—

14 (1) by striking the first sentence and inserting
15 the following: “The Secretary shall submit annually
16 to the Committee on Transportation and Infrastruc-
17 ture of the House of Representatives and the Com-
18 mittee on Commerce, Science, and Transportation of
19 the Senate and make available to the public informa-
20 tion on the allocation and uses of the planning
21 grants allocated under subsection (a), training
22 grants under subsection (b), and grants under sub-
23 section (j) of this section and under section 5107.”;
24 and



1 (2) by striking “Such report” in the second
2 sentence and inserting “The report”.

3 **SEC. 7115. SPECIAL PERMITS AND EXCLUSIONS.**

4 (a) SECTION HEADING.—

5 (1) IN GENERAL.—Section 5117 is amended by
6 striking the section designation and heading and in-
7 serting the following:

8 **“§ 5117. Special permits and exclusions”.**

9 (2) CONFORMING AMENDMENT.—The item re-
10 lating to section 5117 in the analysis for chapter 51
11 is amended to read as follows:

“5117. Special permits and exclusions.”.

12 (b) SUBSECTION HEADING.—The heading for sub-
13 section (a) of section 5117 is amended by striking “EX-
14 EMPT” and inserting “ISSUE SPECIAL PERMITS”.

15 (c) AUTHORITY TO ISSUE SPECIAL PERMITS.—Sec-
16 tion 5117(a)(1) is amended—

17 (1) by striking “an exemption” and inserting “,
18 modify, or terminate a special permit authorizing a
19 variance”; and

20 (2) by striking “transporting, or causing to be
21 transported, hazardous material” and inserting
22 “performing a function regulated by the Secretary
23 under section 5103(b)(1)”.

24 (d) PERIOD OF SPECIAL PERMIT.—Section
25 5117(a)(2) is amended to read as follows:



1 “(2) A special permit issued under this section shall
2 be effective for an initial period of not more than 2 years
3 and may be renewed by the Secretary upon application
4 for successive periods of not more than 4 years each or,
5 in the case of a special permit relating to section 5112,
6 for an additional period of not more than 2 years.”.

7 (e) APPLICATIONS.—Sections 5117(b) is amended—

8 (1) by striking “an exemption” each place it ap-
9 pears and inserting “a special permit”; and

10 (2) by striking “the exemption” and inserting
11 “the special permit”.

12 (f) DEALING WITH APPLICATIONS PROMPTLY.—Sec-
13 tion 5117(c) is amended by striking “the exemption” each
14 place it appears and inserting “the special permit”.

15 (g) LIMITATION ON AUTHORITY.—Section 5117(e) is
16 amended—

17 (1) by striking “an exemption” and inserting “a
18 special permit”; and

19 (2) by striking “be exempt” and inserting “be
20 granted a variance”.

21 (h) REPEAL OF SECTION 5118.—Section 5118, and
22 the item relating to such section in the analysis for chap-
23 ter 51, are repealed.

24 **SEC. 7116. UNIFORM FORMS AND PROCEDURES.**

25 Section 5119 is amended to read as follows:



1 **“§ 5119. Uniform forms and procedures**

2 “(a) ESTABLISHMENT OF WORKING GROUP.—The
3 Secretary shall establish a working group of State and
4 local government officials, including representatives of the
5 National Governors’ Association, the National Association
6 of Counties, the National League of Cities, the United
7 States Conference of Mayors, the National Conference of
8 State Legislatures, and the Alliance for Uniform Hazmat
9 Transportation Procedures.

10 “(b) PURPOSE OF WORKING GROUP.—The purpose
11 of the working group shall be to develop uniform forms
12 and procedures for a State to register, and to issue per-
13 mits to, persons that transport, or cause to be transported,
14 hazardous material by motor vehicle in the State.

15 “(c) LIMITATION ON WORKING GROUP.—The work-
16 ing group may not propose to define or limit the amount
17 of a fee a State may impose or collect.

18 “(d) PROCEDURE.—The Secretary shall develop a
19 procedure for the working group to employ in developing
20 recommendations for the Secretary to harmonize existing
21 State registration and permit laws and regulations relat-
22 ing to the transportation of hazardous materials, with spe-
23 cial attention paid to each State’s unique safety concerns
24 and interest in maintaining strong hazmat safety stand-
25 ards.



1 “(e) REPORT OF WORKING GROUP.—Not later than
2 18 months after the date of enactment of this subsection,
3 the working group shall transmit to the Secretary a report
4 containing recommendations for establishing uniform
5 forms and procedures described in subsection (b).

6 “(f) REGULATIONS.—Not later than 18 months after
7 the date the working group’s report is delivered to the Sec-
8 retary, the Secretary shall issue regulations to carry out
9 such recommendations of the working group as the Sec-
10 retary considers appropriate. In developing such regula-
11 tions, the Secretary shall consider the State needs associ-
12 ated with the transition to and implementation of a uni-
13 form forms and procedures program.

14 “(g) LIMITATION ON STATUTORY CONSTRUCTION.—
15 Nothing in this section shall be construed as prohibiting
16 a State from voluntarily participating in a program of uni-
17 form forms and procedures until such time as the Sec-
18 retary issues regulations under subsection (f).”.

19 **SEC. 7117. INTERNATIONAL UNIFORMITY OF STANDARDS**
20 **AND REQUIREMENTS.**

21 (a) CONSULTATION.—Section 5120(b) is amended by
22 inserting “and requirements” after “standards”.

23 (b) DIFFERENCES WITH INTERNATIONAL STAND-
24 ARDS AND REQUIREMENTS.—Section 5120(c) is
25 amended—



1 (1) in paragraph (1) by inserting “or require-
2 ment” after “standard” each place it appears; and

3 (2) in paragraph (2)—

4 (A) by inserting “standard or” before “re-
5 quirement” each place it appears; and

6 (B) by striking “included in a standard”.

7 **SEC. 7118. ADMINISTRATIVE AUTHORITY.**

8 (a) GENERAL AUTHORITY.—Section 5121(a) is
9 amended—

10 (1) in the first sentence by inserting “conduct
11 tests,” after “investigate,”;

12 (2) in the second sentence by striking “After”
13 and inserting “Except as provided in subsections (c)
14 and (d), after”; and

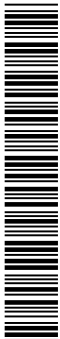
15 (3) by striking “regulation prescribed” and in-
16 serting “regulation prescribed, or an order, special
17 permit, or approval issued,”.

18 (b) RECORDS, REPORTS, AND INFORMATION.—Sec-
19 tion 5121(b) is amended—

20 (1) in paragraph (1) by inserting “and prop-
21 erty” after “records”; and

22 (2) in paragraph (2)—

23 (A) by inserting “property,” after
24 “records,”;



1 (B) by inserting “for inspection” after
2 “available”; and

3 (C) by striking “requests” and inserting
4 “undertakes an investigation or makes a re-
5 quest”.

6 (c) ENHANCED AUTHORITY TO DISCOVER HIDDEN
7 SHIPMENTS OF HAZARDOUS MATERIAL.—Section 5121(c)
8 is amended to read as follows:

9 “(c) INSPECTIONS AND INVESTIGATIONS.—

10 “(1) IN GENERAL.—A designated officer, em-
11 ployee, or agent of the Secretary—

12 “(A) may inspect and investigate, at a rea-
13 sonable time and in a reasonable manner,
14 records and property relating to a function de-
15 scribed in section 5103(b)(1);

16 “(B) except in the case of packaging im-
17 mediately adjacent to its hazardous material
18 contents, may gain access to, open, and exam-
19 ine a package offered for, or in, transportation
20 when the officer, employee, or agent has an ob-
21 jectively reasonable and articulable belief that
22 the package may contain a hazardous material;

23 “(C) may remove from transportation a
24 package or related packages in a shipment of-
25 fered for or in transportation for which—



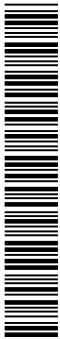
1 “(i) such officer, employee, or agent
2 has an objectively reasonable and
3 articulable belief that the package may
4 pose an imminent hazard; and

5 “(ii) such officer, employee, or agent
6 contemporaneously documents such belief
7 in accordance with procedures set forth in
8 guidance or regulations prescribed under
9 subsection (e);

10 “(D) may gather information from the of-
11 feror, carrier, packaging manufacturer or test-
12 er, or other person responsible for the package,
13 to ascertain the nature and hazards of the con-
14 tents of the package;

15 “(E) as necessary, under terms and condi-
16 tions specified by the Secretary, may order the
17 offeror, carrier, packaging manufacturer or
18 tester, or other person responsible for the pack-
19 age to have the package transported to, opened,
20 and the contents examined and analyzed, at a
21 facility appropriate for the conduct of such ex-
22 amination and analysis; and

23 “(F) when safety might otherwise be com-
24 promised, may authorize properly qualified per-



1 sonnel to assist in the activities conducted
2 under this subsection.

3 “(2) DISPLAY OF CREDENTIALS.—An officer,
4 employee, or agent acting under this subsection shall
5 display proper credentials when requested.

6 “(3) SAFE RESUMPTION OF TRANSPOR-
7 TATION.—In instances when, as a result of an in-
8 spection or investigation under this subsection, an
9 imminent hazard is not found to exist, the Sec-
10 retary, in accordance with procedures set forth in
11 regulations prescribed under subsection (e), shall
12 assist—

13 “(A) in the safe and prompt resumption of
14 transportation of the package concerned; or

15 “(B) in any case in which the hazardous
16 material being transported is perishable, in the
17 safe and expeditious resumption of transpor-
18 tation of the perishable hazardous material.”.

19 (d) EMERGENCY AUTHORITY FOR HAZARDOUS MA-
20 TERIAL TRANSPORTATION.—Section 5121 is amended—

21 (1) by redesignating subsections (d) and (e) as
22 subsections (f) and (h), respectively; and

23 (2) by inserting after subsection (c) the fol-
24 lowing:

25 “(d) EMERGENCY ORDERS.—



1 “(1) IN GENERAL.—If, upon inspection, inves-
2 tigation, testing, or research, the Secretary deter-
3 mines that a violation of a provision of this chapter,
4 or a regulation prescribed under this chapter, or an
5 unsafe condition or practice, constitutes or is caus-
6 ing an imminent hazard, the Secretary may issue or
7 impose emergency restrictions, prohibitions, recalls,
8 or out-of-service orders, without notice or an oppor-
9 tunity for a hearing, but only to the extent necessary
10 to abate the imminent hazard.

11 “(2) WRITTEN ORDERS.—The action of the
12 Secretary under paragraph (1) shall be in a written
13 emergency order that—

14 “(A) describes the violation, condition, or
15 practice that constitutes or is causing the immi-
16 nent hazard;

17 “(B) states the restrictions, prohibitions,
18 recalls, or out-of-service orders issued or im-
19 posed; and

20 “(C) describes the standards and proce-
21 dures for obtaining relief from the order.

22 “(3) OPPORTUNITY FOR REVIEW.—After taking
23 action under paragraph (1), the Secretary shall pro-
24 vide for review of the action under section 554 of
25 title 5 if a petition for review is filed within 20 cal-



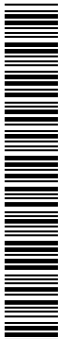
1 endar days of the date of issuance of the order for
2 the action.

3 “(4) EXPIRATION OF EFFECTIVENESS OF
4 ORDER.—If a petition for review of an action is filed
5 under paragraph (3) and the review under that
6 paragraph is not completed by the end of the 30-day
7 period beginning on the date the petition is filed, the
8 action shall cease to be effective at the end of such
9 period unless the Secretary determines, in writing,
10 that the imminent hazard providing a basis for the
11 action continues to exist.

12 “(5) OUT OF SERVICE ORDER DEFINED.—In
13 this subsection, the term ‘out-of-service order’ means
14 a requirement that an aircraft, vessel, motor vehicle,
15 train, railcar, locomotive, other vehicle, transport
16 unit, transport vehicle, freight container, potable
17 tank, or other package not be moved until specified
18 conditions have been met.

19 “(e) REGULATIONS.—

20 “(1) TEMPORARY REGULATIONS.—Not later
21 than 60 days after the date of enactment of the
22 Hazardous Materials Transportation Safety and Se-
23 curity Reauthorization Act of 2005, the Secretary
24 shall issue temporary regulations to carry out sub-
25 sections (c) and (d). The temporary regulations shall



1 expire on the date of issuance of the regulations
2 under paragraph (2).

3 “(2) FINAL REGULATIONS.—Not later than 1
4 year after such date of enactment, the Secretary
5 shall issue regulations to carry out subsections (c)
6 and (d) in accordance with subchapter II of chapter
7 5 of title 5.”.

8 (e) GRANTS AND COOPERATIVE AGREEMENTS.—Sec-
9 tion 5121 is amended by inserting after subsection (f) (as
10 redesignated by subsection (d)(1) of this section) the fol-
11 lowing:

12 “(g) GRANTS AND COOPERATIVE AGREEMENTS.—
13 The Secretary may enter into grants and cooperative
14 agreements with a person, agency, or instrumentality of
15 the United States, a unit of State or local government,
16 an Indian tribe, a foreign government (in coordination
17 with the Department of State), an educational institution,
18 or other appropriate entity—

19 “(1) to expand risk assessment and emergency
20 response capabilities with respect to the security of
21 transportation of hazardous material;

22 “(2) to enhance emergency communications ca-
23 pacity as determined necessary by the Secretary, in-
24 cluding the use of integrated, interoperable emer-



1 agency communications technologies where appro-
2 priate;

3 “(3) to conduct research, development, dem-
4 onstration, risk assessment, and emergency response
5 planning and training activities; or

6 “(4) to otherwise carry out this chapter.”.

7 (f) REPORT.—Section 5121(h) (as redesignated by
8 subsection (d)(1) of this section) is amended—

9 (1) in the matter preceding paragraph (1) by
10 striking “submit to the President for transmittal to
11 the Congress” and inserting “transmit to the Com-
12 mittee on Transportation and Infrastructure of the
13 House of Representatives and the Committee on
14 Commerce, Science, and Transportation of the Sen-
15 ate”; and

16 (2) in paragraph (4) by inserting “relating to a
17 function regulated by the Secretary under section
18 5103(b)(1)” after “activities”.

19 **SEC. 7119. ENFORCEMENT.**

20 (a) IN GENERAL.—Section 5122(a) is amended—

21 (1) in the first sentence by striking “chapter or
22 a regulation prescribed or order” and inserting
23 “chapter or a regulation prescribed or order, special
24 permit, or approval”; and



1 (2) by striking the second sentence and insert-
2 ing the following: “The court may award appropriate
3 relief, including a temporary or permanent injunc-
4 tion, punitive damages, and assessment of civil pen-
5 alties considering the same penalty amounts and fac-
6 tors as prescribed for the Secretary in an adminis-
7 trative case under section 5123.”.

8 (b) IMMINENT HAZARDS.—Section 5122(b)(1)(B) is
9 amended by striking “or ameliorate the” and inserting “or
10 mitigate the”.

11 **SEC. 7120. CIVIL PENALTY.**

12 (a) PENALTY.—Section 5123(a) is amended—

13 (1) in paragraph (1)—

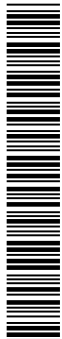
14 (A) by striking “regulation prescribed or
15 order issued” and inserting “regulation, order,
16 special permit, or approval issued”; and

17 (B) by striking “\$25,000” and inserting
18 “\$50,000”;

19 (2) by redesignating paragraph (2) as para-
20 graph (4); and

21 (3) by inserting after paragraph (1) the fol-
22 lowing:

23 “(2) If the Secretary finds that a violation under
24 paragraph (1) results in death, serious illness, or severe
25 injury to any person or substantial destruction of prop-



erty, the Secretary may increase the amount of the civil penalty for such violation to not more than \$100,000.

“(3) If the violation is related to training, paragraph (1) shall be applied by substituting ‘\$450’ for ‘\$250’.”.

(b) HEARING REQUIREMENT.—Section 5123(b) is amended by striking “regulation prescribed” and inserting “regulation prescribed or order, special permit, or approval issued”.

(c) CIVIL ACTIONS TO COLLECT.—Section 5123(d) is amended by striking “section.” and inserting “section and any accrued interest on the civil penalty as calculated in accordance with section 1005 of the Oil Pollution Act of 1990 (33 U.S.C. 2705). In the civil action, the amount and appropriateness of the civil penalty shall not be subject to review.”.

(d) EFFECTIVE DATES.—

(1) HEARING REQUIREMENT.—The amendment made by subsection (b) shall take effect on the date of enactment of this Act, and shall apply with respect to violations described in section 5123(a) of title 49, United States Code (as amended by this section), that occur on or after that date.

(2) CIVIL ACTIONS TO COLLECT.—The amendment made by subsection (c) shall apply with respect to civil penalties imposed on violations described in



1 section 5123(a) of title 49, United States Code (as
2 amended by this section), that occur on or after the
3 date of enactment of this Act.

4 **SEC. 7121. CRIMINAL PENALTY.**

5 Section 5124 is amended to read as follows:

6 **“§ 5124. Criminal penalty**

7 “(a) IN GENERAL.—A person knowingly violating
8 section 5104(b) or willfully or recklessly violating this
9 chapter or a regulation, order, special permit, or approval
10 issued under this chapter shall be fined under title 18,
11 imprisoned for not more than 5 years, or both; except that
12 the maximum amount of imprisonment shall be 10 years
13 in any case in which the violation involves the release of
14 a hazardous material that results in death or bodily injury
15 to any person.

16 “(b) KNOWING VIOLATIONS.—For purposes of this
17 section—

18 “(1) a person acts knowingly when—

19 “(A) the person has actual knowledge of
20 the facts giving rise to the violation; or

21 “(B) a reasonable person acting in the cir-
22 cumstances and exercising reasonable care
23 would have that knowledge; and

24 “(2) knowledge of the existence of a statutory
25 provision, or a regulation or a requirement required



1 by the Secretary, is not an element of an offense
2 under this section.

3 “(c) WILLFUL VIOLATIONS.—For purposes of this
4 section, a person acts willfully when—

5 “(1) the person has knowledge of the facts giv-
6 ing rise to the violation; and

7 “(2) the person has knowledge that the conduct
8 was unlawful.

9 “(d) RECKLESS VIOLATIONS.—For purposes of this
10 section, a person acts recklessly when the person displays
11 a deliberate indifference or conscious disregard to the con-
12 sequences of that person’s conduct.”.

13 **SEC. 7122. PREEMPTION.**

14 (a) SUBSTANTIVE DIFFERENCES.—Section 5125(b)
15 is amended—

16 (1) by striking subparagraph (E) of paragraph
17 (1) and inserting the following:

18 “(E) the designing, manufacturing, fabricating,
19 inspecting, marking, maintaining, reconditioning, re-
20 pairing, or testing a package, container, or pack-
21 aging component that is represented, marked, cer-
22 tified, or sold as qualified for use in transporting
23 hazardous material in commerce.”; and



1 (2) by striking “prescribes after November 16,
2 1990. However, the” in paragraph (2) and inserting
3 “prescribes. The”.

4 (b) DECISIONS ON PREEMPTION.—Section
5 5125(d)(1) is amended in the first sentence by inserting
6 before the period at the end “or section 5119(e)”.

7 (c) WAIVER OF PREEMPTION.—Section 5125(e) is
8 amended in the first sentence by inserting before the pe-
9 riod at the end “or section 5119(b)”.

10 (d) STANDARDS.—Section 5125 is amended by add-
11 ing at the end the following:

12 “(h) APPLICATION OF EACH PREEMPTION STAND-
13 ARD.—Each standard for preemption in subsection (b),
14 (c)(1), or (d), and in section 5119(b), is independent in
15 its application to a requirement of a State, political sub-
16 division of a State, or Indian tribe.

17 “(i) NON-FEDERAL ENFORCEMENT STANDARDS.—
18 This section does not apply to any procedure, penalty, re-
19 quired mental state, or other standard utilized by a State,
20 political subdivision of a State, or Indian tribe to enforce
21 a requirement applicable to the transportation of haz-
22 ardous material.”.

23 **SEC. 7123. JUDICIAL REVIEW.**

24 (a) REPEAL.—Section 5125 (as amended by section
25 7122 of this Act) is further amended—



1 (1) by striking subsection (f);

2 (2) by redesignating subsections (g), (h), and

3 (i) as subsections (f), (g), and (h), respectively; and

4 (3) in subsection (f) (as so redesignated) by

5 moving paragraph (2) (including subparagraphs (A)

6 through (D)) 2 ems to the left.

7 (b) JUDICIAL REVIEW.—Chapter 51 is amended by

8 redesignating section 5127 as section 5128 and by insert-

9 ing after section 5126 the following:

10 **“§ 5127. Judicial review**

11 “(a) FILING AND VENUE.—Except as provided in

12 section 20114(c), a person adversely affected or aggrieved

13 by a final action of the Secretary under this chapter may

14 petition for review of the final action in the United States

15 Court of Appeals for the District of Columbia or in the

16 court of appeals for the United States for the circuit in

17 which the person resides or has its principal place of busi-

18 ness. The petition must be filed not more than 60 days

19 after the Secretary’s action becomes final.

20 “(b) JUDICIAL PROCEDURES.—When a petition is

21 filed under subsection (a), the clerk of the court imme-

22 diately shall send a copy of the petition to the Secretary.

23 The Secretary shall file with the court a record of any

24 proceeding in which the final action was issued, as pro-

25 vided in section 2112 of title 28.



1 “(c) AUTHORITY OF COURT.—The court has exclu-
2 sive jurisdiction, as provided in subchapter II of chapter
3 5 of title 5, to affirm or set aside any part of the Sec-
4 retary’s final action and may order the Secretary to con-
5 duct further proceedings.

6 “(d) REQUIREMENT FOR PRIOR OBJECTION.—In re-
7 viewing a final action under this section, the court may
8 consider an objection to a final action of the Secretary
9 only if the objection was made in the course of a pro-
10 ceeding or review conducted by the Secretary or if there
11 was a reasonable ground for not making the objection in
12 the proceeding.”.

13 (c) CONFORMING AMENDMENT.—The analysis for
14 chapter 51 is amended by striking the item relating to
15 section 5127 and inserting the following:

“5127. Judicial review.

“5128. Authorization of appropriations.”.

16 **SEC. 7124. RELATIONSHIP TO OTHER LAWS.**

17 Section 5126(a) is amended—

18 (1) by striking “or causes to be transported
19 hazardous material,” and inserting “hazardous ma-
20 terial, or causes hazardous material to be trans-
21 ported,”;

22 (2) by striking “manufactures,” and all that
23 follows through “or sells” and inserting “designs,
24 manufactures, fabricates, inspects, marks, main-



1 tains, reconditions, repairs, or tests a package, con-
2 tainer, or packaging component that is represented”;

3 (3) by striking “must” and inserting “shall”;
4 and

5 (4) by striking “manufacturing,” and all that
6 follows through “testing” and inserting “designing,
7 manufacturing, fabricating, inspecting, marking,
8 maintaining, reconditioning, repairing, or testing”.

9 **SEC. 7125. AUTHORIZATION OF APPROPRIATIONS.**

10 Section 5128 (as redesignated by section 7123(b) of
11 this Act) is amended to read as follows:

12 **“§ 5128. Authorizations of appropriations**

13 “(a) IN GENERAL.—In order to carry out this chap-
14 ter (except sections 5107(e), 5108(g)(2), 5113, 5115,
15 5116, and 5119), the following amounts are authorized
16 to be appropriated to the Secretary:

17 “(1) For fiscal year 2005, \$24,940,000.

18 “(2) For fiscal year 2006, \$29,000,000.

19 “(3) For fiscal year 2007, \$30,000,000.

20 “(4) For fiscal year 2008, \$30,000,000.

21 “(b) HAZARDOUS MATERIALS EMERGENCY PRE-
22 PAREDNESS FUND.—There shall be available to the Sec-
23 retary, from the account established pursuant to section
24 5116(i), for each of fiscal years 2005 through 2008 the
25 following:



1 “(1) To carry out section 5115, \$200,000.

2 “(2) To carry out sections 5116(a) and (b),
3 \$21,800,000 to be allocated as follows:

4 “(A) \$5,000,000 to carry out section
5 5116(a).

6 “(B) \$7,800,000 to carry out section
7 5116(b).

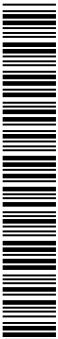
8 “(C) Of the amount provided for by this
9 paragraph for a fiscal year in excess of the sub-
10 allocations in subparagraphs (A) and (B)—

11 “(i) 35 percent shall be used to carry
12 out section 5116(a); and

13 “(ii) 65 percent shall be used to carry
14 out section 5116(b),

15 except that the Secretary may increase the pro-
16 portion to carry out section 5116(b) and de-
17 crease the proportion to carry out section
18 5116(a) if the Secretary determines that such
19 reallocation is appropriate to carry out the in-
20 tended uses of these funds as described in the
21 applications submitted by States and Indian
22 tribes.

23 “(3) To carry out section 5116(f), \$150,000.



1 “(4) To publish and distribute the Emergency
2 Response Guidebook under section 5116(i)(3),
3 \$625,000.

4 “(5) To carry out section 5116(j), \$1,000,000.

5 “(c) HAZMAT TRAINING GRANTS.—There shall be
6 available to the Secretary, from the account established
7 pursuant to section 5116(i), to carry out section 5107(e)
8 \$4,000,000 for each of fiscal years 2005 through 2008.

9 “(d) ISSUANCE OF HAZMAT LICENSES.—There are
10 authorized to be appropriated for the Department of
11 Transportation such amounts as may be necessary to
12 carry out section 5103a.

13 “(e) CREDITS TO APPROPRIATIONS.—The Secretary
14 may credit to any appropriation to carry out this chapter
15 an amount received from a State, Indian tribe, or other
16 public authority or private entity for expenses the Sec-
17 retary incurs in providing training to the State, authority,
18 or entity.

19 “(f) AVAILABILITY OF AMOUNTS.—Amounts made
20 available by or under this section remain available until
21 expended.”.

22 **SEC. 7126. REFERENCES TO THE SECRETARY OF TRANS-**
23 **PORTATION.**

24 Chapter 51 is amended by striking “Secretary of
25 Transportation” each place it appears (other than the sec-



1 and place it appears in section 5108(g)(2)(C) and in sec-
2 tions 5102(11), 5103(c), 5103a(c), 5115(a), 5115(c)(3),
3 5116(i), and 5120(a)) and inserting “Secretary”.

4 **SEC. 7127. CRIMINAL MATTERS.**

5 Section 845(a)(1) of title 18, United States Code, is
6 amended to read as follows:

7 “(1) aspects of the transportation of explosive
8 materials via railroad, water, highway, or air that
9 pertain to safety, including security, and are regu-
10 lated by the Department of Transportation or the
11 Department of Homeland Security;”.

12 **SEC. 7128. ADDITIONAL CIVIL AND CRIMINAL PENALTIES.**

13 (a) TITLE 49 PENALTIES.—Section 46312 is
14 amended—

15 (1) by striking “part—” in subsection (a) and
16 inserting “part or chapter 51—”; and

17 (2) by inserting “or chapter 51” in subsection
18 (b) after “under this part”.

19 (b) TITLE 18 PENALTIES.—Section 3663(a)(1)(A) of
20 title 18, United States Code, is amended by inserting
21 “5124,” before “46312,”.

22 **SEC. 7129. HAZARDOUS MATERIAL TRANSPORTATION PLAN**
23 **REQUIREMENT.**

24 (a) IN GENERAL.—Subpart I of part 172 of the De-
25 partment of Transportation’s regulations (49 C.F.R.



1 172.800 et seq.), or any subsequent Department of Trans-
2 portation regulation in pari materia, does not apply to the
3 surface transportation activities of a farmer that are—

4 (1) in direct support of the farmer's farming
5 operations; and

6 (2) conducted within a 150-mile radius of those
7 operations.

8 (b) FARMER DEFINED.—In this section, the term
9 “farmer” means a person—

10 (1) actively engaged in the production or rais-
11 ing of crops, poultry, livestock, or other agricultural
12 commodities; and

13 (2) whose gross receipts from the sale of such
14 agricultural commodities or products do not exceed
15 \$500,000 annually.

16 **SEC. 7130. DETERMINING AMOUNT OF UNDECLARED SHIP-**
17 **MENTS OF HAZARDOUS MATERIALS ENTER-**
18 **ING THE UNITED STATES.**

19 (a) STUDY.—The Comptroller General shall review
20 existing options and determine additional options for dis-
21 covering the amount of undeclared shipments of hazardous
22 materials (as defined in section 5101 of title 49, United
23 States Code) entering the United States.

24 (b) REPORT.—Not later than 1 year after the date
25 of enactment of this Act, the Comptroller General shall



1 transmit to the Committee on Transportation and Infra-
2 structure of the House of Representatives and the Com-
3 mittee on Commerce, Science, and Transportation of the
4 Senate a report on the results of the study.

5 **SEC. 7131. HAZARDOUS MATERIALS RESEARCH PROJECTS.**

6 (a) IN GENERAL.—The Administrator of the Pipeline
7 and Hazardous Materials Safety Administration shall
8 enter into a contract with the National Academy of
9 Sciences to carry out the 9 research projects called for
10 in the 2005 Special Report 283 of the Transportation Re-
11 search Board entitled “Cooperative Research for Haz-
12 ardous Materials Transportation: Defining the Need, Con-
13 verging on Solutions”. In carrying out the research
14 projects, the National Academy of Sciences shall consult
15 with the Administrator.

16 (b) REPORT.—Not later than 6 months after the date
17 of enactment of this Act, the Secretary shall transmit to
18 the Committee on Transportation and Infrastructure of
19 the House of Representatives and the Committee on Com-
20 merce, Science, and Transportation of the Senate a report
21 on the need to establish a cooperative research program
22 on hazardous materials transportation.

23 (c) FUNDING.—Of the amounts made available by
24 section 5101(a)(1) of this Act, \$1,250,000 for each of fis-



1 cal years 2006 through 2009 shall be available to carry
2 out this section.

3 **SEC. 7132. NATIONAL FIRST RESPONDER TRANSPORTATION**
4 **INCIDENT RESPONSE SYSTEM.**

5 (a) IN GENERAL.—The Secretary shall provide fund-
6 ing to the Operation Respond Institute to design, build,
7 and operate a seamless first responder hazardous mate-
8 rials incident detection, preparedness, and response sys-
9 tem.

10 (b) EXPANSION.—This system shall include an ex-
11 pansion of the Operation Respond Emergency Information
12 System (OREIS).

13 (c) AUTHORIZATION OF APPROPRIATIONS.—There is
14 authorized to be appropriated to the Secretary to carry
15 out this section \$2,500,000 for each of fiscal years 2005
16 through 2008.

17 **SEC. 7133. COMMON CARRIER PIPELINE SYSTEM.**

18 (a) STUDY.—The Secretary shall conduct a study of
19 the economic, environmental, and homeland security ad-
20 vantages and disadvantages of operating a common carrier
21 pipeline system in the States of Texas, Louisiana, Mis-
22 sissippi, and Alabama for the transportation of aromatic
23 chemicals.

24 (b) EVALUATION.—In conducting the study, the Sec-
25 retary shall evaluate the appropriateness of different Fed-



1 eral incentives for the construction and operation of such
2 a pipeline system, including loan guarantees, other types
3 of financial assistance, and various types of tax incentives.

4 (c) REPORT.—Not later than December 31, 2005, the
5 Secretary shall transmit to Congress a report on the re-
6 sults of the study, including recommendations, if any, for
7 legislation.

8 **Subtitle B—Sanitary Food** 9 **Transportation**

10 **SEC. 7201. SHORT TITLE.**

11 This subtitle may be cited as the “Sanitary Food
12 Transportation Act of 2005”.

13 **SEC. 7202. RESPONSIBILITIES OF SECRETARY OF HEALTH** 14 **AND HUMAN SERVICES.**

15 (a) UNSANITARY TRANSPORT DEEMED ADULTERA-
16 TION.—Section 402 of the Federal Food, Drug, and Cos-
17 metic Act (21 U.S.C. 342) is amended by adding at the
18 end the following:

19 “(i) If it is transported or offered for transport by
20 a shipper, carrier by motor vehicle or rail vehicle, receiver,
21 or any other person engaged in the transportation of food
22 under conditions that are not in compliance with regula-
23 tions promulgated under section 416.”.

24 (b) SANITARY TRANSPORTATION REQUIREMENTS.—
25 Chapter IV of the Federal Food, Drug, and Cosmetic Act



1 (21 U.S.C. 341 et seq.) is amended by adding at the end
2 the following:

3 **“SEC. 416. SANITARY TRANSPORTATION PRACTICES.**

4 “(a) DEFINITIONS.—In this section:

5 “(1) BULK VEHICLE.—The term ‘bulk vehicle’
6 includes a tank truck, hopper truck, rail tank car,
7 hopper car, cargo tank, portable tank, freight con-
8 tainer, or hopper bin, and any other vehicle in which
9 food is shipped in bulk, with the food coming into
10 direct contact with the vehicle.

11 “(2) TRANSPORTATION.—The term ‘transporta-
12 tion’ means any movement in commerce by motor
13 vehicle or rail vehicle.

14 “(b) REGULATIONS.—The Secretary shall by regula-
15 tion require shippers, carriers by motor vehicle or rail ve-
16 hicle, receivers, and other persons engaged in the trans-
17 portation of food to use sanitary transportation practices
18 prescribed by the Secretary to ensure that food is not
19 transported under conditions that may render the food
20 adulterated.

21 “(c) CONTENTS.—The regulations under subsection
22 (b) shall—

23 “(1) prescribe such practices as the Secretary
24 determines to be appropriate relating to—

25 “(A) sanitation;



1 “(B) packaging, isolation, and other pro-
2 tective measures;

3 “(C) limitations on the use of vehicles;

4 “(D) information to be disclosed—

5 “(i) to a carrier by a person arranging
6 for the transport of food; and

7 “(ii) to a manufacturer or other per-
8 son that—

9 “(I) arranges for the transpor-
10 tation of food by a carrier; or

11 “(II) furnishes a tank vehicle or
12 bulk vehicle for the transportation of
13 food; and

14 “(E) recordkeeping; and

15 “(2) include—

16 “(A) a list of nonfood products that the
17 Secretary determines may, if shipped in a bulk
18 vehicle, render adulterated food that is subse-
19 quently transported in the same vehicle; and

20 “(B) a list of nonfood products that the
21 Secretary determines may, if shipped in a
22 motor vehicle or rail vehicle (other than a tank
23 vehicle or bulk vehicle), render adulterated food
24 that is simultaneously or subsequently trans-
25 ported in the same vehicle.



1 “(d) WAIVERS.—

2 “(1) IN GENERAL.—The Secretary may waive
3 any requirement under this section, with respect to
4 any class of persons, vehicles, food, or nonfood prod-
5 ucts, if the Secretary determines that the waiver—

6 “(A) will not result in the transportation
7 of food under conditions that would be unsafe
8 for human or animal health; and

9 “(B) will not be contrary to the public in-
10 terest.

11 “(2) PUBLICATION.—The Secretary shall pub-
12 lish in the Federal Register any waiver and the rea-
13 sons for the waiver.

14 “(e) PREEMPTION.—

15 “(1) IN GENERAL.—A requirement of a State
16 or political subdivision of a State that concerns the
17 transportation of food is preempted if—

18 “(A) complying with a requirement of the
19 State or political subdivision and a requirement
20 of this section, or a regulation prescribed under
21 this section, is not possible; or

22 “(B) the requirement of the State or polit-
23 ical subdivision as applied or enforced is an ob-
24 stacle to accomplishing and carrying out this



1 section or a regulation prescribed under this
2 section.

3 “(2) APPLICABILITY.—This subsection applies
4 to transportation that occurs on or after the effec-
5 tive date of the regulations promulgated under sub-
6 section (b).

7 “(f) ASSISTANCE OF OTHER AGENCIES.—The Sec-
8 retary of Transportation, the Secretary of Agriculture, the
9 Administrator of the Environmental Protection Agency,
10 and the heads of other Federal agencies, as appropriate,
11 shall provide assistance on request, to the extent resources
12 are available, to the Secretary for the purposes of carrying
13 out this section.”.

14 (c) INSPECTION OF TRANSPORTATION RECORDS.—

15 (1) REQUIREMENT.—Section 703 of the Fed-
16 eral Food, Drug, and Cosmetic Act (21 U.S.C. 373)
17 is amended—

18 (A) by striking the section heading and all
19 that follows through “For the purpose” and in-
20 serting the following:

21 **“SEC. 703. RECORDS.**

22 “(a) IN GENERAL.—For the purpose”; and

23 (B) by adding at the end the following:

24 “(b) FOOD TRANSPORTATION RECORDS.—A shipper,
25 carrier by motor vehicle or rail vehicle, receiver, or other



1 person subject to section 416 shall, on request of an officer
2 or employee designated by the Secretary, permit the offi-
3 cer or employee, at reasonable times, to have access to
4 and to copy all records that the Secretary requires to be
5 kept under section 416(c)(1)(E).”.

6 (2) CONFORMING AMENDMENT.—Subsection (a)
7 of section 703 of the Federal Food, Drug, and Cos-
8 metic Act (as designated by paragraph (1)(A)) is
9 amended by striking “carriers.” and inserting “car-
10 riers, except as provided in subsection (b).”.

11 (d) PROHIBITED ACTS; RECORDS INSPECTION.—Sec-
12 tion 301(e) of the Federal Food, Drug, and Cosmetic Act
13 (21 U.S.C. 331(e)) is amended by inserting “416,” before
14 “504,” each place it appears.

15 (e) UNSAFE FOOD TRANSPORTATION.—Section 301
16 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C.
17 331) is amended by adding at the end the following:

18 “(hh) The failure by a shipper, carrier by motor vehi-
19 cle or rail vehicle, receiver, or any other person engaged
20 in the transportation of food to comply with the sanitary
21 transportation practices prescribed by the Secretary under
22 section 416.”.

23 **SEC. 7203. DEPARTMENT OF TRANSPORTATION REQUIRE-**
24 **MENTS.**

25 Chapter 57 is amended to read as follows:



1 **“CHAPTER 57—SANITARY FOOD**
2 **TRANSPORTATION**

“5701. Food Transportation safety inspections.

3 **“§ 5701. Food transportation safety inspections**

4 “(a) INSPECTION PROCEDURES.—

5 “(1) IN GENERAL.—The Secretary of Transpor-
6 tation, in consultation with the Secretary of Health
7 and Human Services and the Secretary of Agri-
8 culture, shall establish procedures for transportation
9 safety inspections for the purpose of identifying sus-
10 pected incidents of contamination or adulteration
11 of—

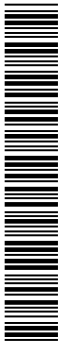
12 “(A) food in violation of regulations pro-
13 mulgated under section 416 of the Federal
14 Food, Drug, and Cosmetic Act;

15 “(B) a carcass, part of a carcass, meat,
16 meat food product, or animal subject to deten-
17 tion under section 402 of the Federal Meat In-
18 spection Act (21 U.S.C. 672); and

19 “(C) poultry products or poultry subject to
20 detention under section 19 of the Poultry Prod-
21 ucts Inspection Act (21 U.S.C. 467a).

22 “(2) TRAINING.—

23 “(A) IN GENERAL.—The Secretary of
24 Transportation shall develop and carry out a

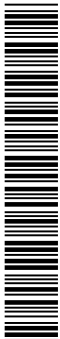


1 training program to conduct enforcement of
2 this chapter and regulations prescribed under
3 this chapter or compatible State laws and regu-
4 lations.

5 “(B) CONDUCT.—In carrying out this
6 paragraph, the Secretary of Transportation
7 shall train inspectors, including Department of
8 Transportation personnel, State employees de-
9 scribed under subsection (c), or personnel paid
10 with funds authorized under sections 31102
11 and 31104, in the recognition of adulteration
12 problems associated with the transportation of
13 cosmetics, devices, drugs, food, and food addi-
14 tives and in the procedures for obtaining assist-
15 ance of the appropriate departments, agencies,
16 and instrumentalities of the Government and
17 State authorities to support the enforcement.

18 “(3) APPLICABILITY.—The procedures estab-
19 lished under paragraph (1) shall apply, at a min-
20 imum, to Department of Transportation personnel
21 that perform commercial motor vehicle or railroad
22 safety inspections.

23 “(b) NOTIFICATION OF SECRETARY OF HEALTH AND
24 HUMAN SERVICES OR SECRETARY OF AGRICULTURE.—
25 The Secretary of Transportation shall promptly notify the



1 Secretary of Health and Human Services or the Secretary
2 of Agriculture, as applicable, of any instances of potential
3 food contamination or adulteration of a food identified
4 during transportation safety inspections.

5 “(c) USE OF STATE EMPLOYEES.—The means by
6 which the Secretary of Transportation carries out sub-
7 section (b) may include inspections conducted by State
8 employees using funds authorized to be appropriated
9 under sections 31102 through 31104.”.

10 **SEC. 7204. EFFECTIVE DATE.**

11 This subtitle takes effect on October 1, 2005.

12 **Subtitle C—Research and Innova-**
13 **tive Technology Administration**

14 **SEC. 7301. ADMINISTRATIVE AUTHORITY.**

15 Section 112 is amended by adding at the end the fol-
16 lowing:

17 “(e) ADMINISTRATIVE AUTHORITIES.—The Adminis-
18 trator may enter into grants and cooperative agreements
19 with Federal agencies, State and local government agen-
20 cies, other public entities, private organizations, and other
21 persons—

22 “(1) to conduct research into transportation
23 service and infrastructure assurance; and

24 “(2) to carry out other research activities of the
25 Administration.”.

